

**Letter of Findings: 09-0010
Individual Income Tax
For 2007**

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ISSUE

I. Residency Status - Individual Income Tax.

Authority: IC § 6-3-2-1(a); IC § 6-3-1-12; [45 IAC 3.1-1-22](#); IC § 6-8.1-5-1.

Taxpayers argue that they were not Indiana residents during 2007.

STATEMENT OF FACTS

Taxpayers are former Indiana residents with a current Florida address. For the years prior to 2007, taxpayer filed for and paid Indiana income tax. For 2007, taxpayers filed a non-resident income tax return (IT-40 PNR) on which they claimed Florida residency for the entire 2007 tax year. Thereafter, taxpayers sought a refund of the Indiana income tax which had been withheld on their behalf during 2007. The Department of Revenue (Department) denied the refund. Taxpayers submitted a protest in which they supplied documentation intended to verify their Florida residency. An administrative hearing was held, and this Letter of Findings results. Further facts will be supplied as necessary.

I. Residency Status - Individual Income Tax.

DISCUSSION

Indiana imposes state income tax in the following manner. IC § 6-3-2-1(a) states that "[e]ach taxable year, a tax at the rate of three and four-tenths percent (3.4 [percent]) of adjusted gross income is imposed upon the adjusted gross income of every **resident** person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." (**Emphasis added**).

Taxpayers maintain that they were not Indiana residents during 2007. IC § 6-3-1-12 defines the term "resident" to include "(a) any individual who was domiciled in this state during the taxable year, **or** (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state...." (**Emphasis added**).

[45 IAC 3.1-1-22](#) defines domicile as follows:

For the purposes of this Act, a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur. In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established. The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance
- (6) Titled and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile.

In order to determine whether Taxpayers' income is subject to Indiana adjusted gross income tax, Taxpayers must show that they were not Indiana residents in 2007. "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." IC § 6-8.1-5-1(c). The operative language of IC § 6-3-1-12 requires taxpayers to demonstrate two things. First, IC § 6-3-1-12(a) requires taxpayers to show that they were not domiciled in Indiana in 2007. Second, IC § 6-3-1-12(b) requires taxpayers to show either that they did not "maintain a permanent place of residence" in Indiana or that they spent one hundred eighty-three (183) days or less in Indiana during 2007.

Taxpayers provided documentation in an attempt to verify their claim, set forth on their 2007 IT-40 PNR, that they were not Indiana residents for any part of the 2007 tax year. Taxpayers provided proof that they were issued Florida driver's licenses and registered to vote in Florida on December 7, 2007. Taxpayers claimed to have turned

in their Indiana driver's licenses on this date, and records indicate that their Indiana driver's licenses were officially cancelled on January 24, 2008. Taxpayers owned a home in Indiana during all of 2007 and claimed an Indiana Homestead Credit for the Indiana property that year. Subsequently, taxpayers requested the Homestead Credit be removed for the 2008 tax year. Taxpayers provided receipts documenting two separate rentals – one for a six month and one for a twelve month term – at a Florida RV park reflecting 212 days of the 2007 tax year.

Taxpayers have failed to meet both of the residency standards contained in IC § 6-3-1-12 for the 2007 tax year. Taxpayers have demonstrated that they were not Indiana residents under IC § 6-3-1-12(b) because they spent 212 days outside of Indiana. However, taxpayers have failed to demonstrate that they were not domiciled in Indiana in 2007 and thus are considered Indiana residents under IC § 6-3-1-12(a). The factors which demonstrate taxpayers' intent to set up a home in Florida, such as registering to vote and obtaining a Florida driver's license, occurred near the end of the year. The timing of these events contradicts taxpayers' claim that they were not Indiana residents for any part of 2007. Other factors, such as the claim for an Indiana Homestead Credit and the duration of their Florida living arrangements, support the finding that taxpayers maintained an Indiana domicile for the 2007 tax year. Taxpayers have provided insufficient evidence that they intended to establish a domicile in Florida for the entire 2007 tax year, and thus are deemed to have maintained their Indiana residency during this time. Consequently, the Department was correct in denying the taxpayers' claim for a refund.

FINDING

Taxpayers' protest is respectfully denied.

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